



Bankruptcy Court Guide

A brief guide to the practice and procedure of the
Bankruptcy Court of the High Court of Justice

1. Jurisdiction

- 1.1 The High Court of Justice in Bankruptcy deals with proceedings in two categories:
 - Interim order ("IO") proceedings leading to, and dealing with, individual voluntary arrangements ("IVAs") under Part VIII of the Insolvency Act 1986 ("the Act"); and
 - Bankruptcy proceedings under Part IX of the Act.
- 1.2 The jurisdiction is largely territorial; the High Court exercises jurisdiction in relation to proceedings allocated to the London insolvency District. Rule 6.9 of the Insolvency Rules 1986 ("IR") specifies the court in which a Creditor's bankruptcy petition is to be presented, and under that rule most petitions presented by government departments are presented in the High Court, irrespective of territorial jurisdiction. Other rules in the IR regulate territorial jurisdiction in other classes of bankruptcy proceedings. Nominated County Courts with bankruptcy jurisdiction exercise jurisdiction on a territorial basis in cases which are not allocated to the High Court.
- 1.3 Jurisdiction may also be affected by the *EC Regulation on Insolvency Proceedings*. The UK courts may not have jurisdiction over a debtor who has his centre of main interests in another EU member state other than Denmark.

2. Starting Proceedings

- 2.1 Proceedings in the Bankruptcy Court are started either by originating application (*Form 7.1* in Schedule 4 to the IR) or by petition (using one of Forms 6.7 to 6.10 inclusive) available from the Insolvency Service.
- 2.2 Two types of proceedings are started by originating application and one by petition:
- Applications for IOs to lead to an IVA under Part VIII of the act are made by originating application if no bankruptcy petition has been presented. (If there is an existing petition, or if a bankruptcy order ("BO") has been made and the applicant has not been discharged, the application is made by ordinary application in *Form 7.2*).
 - Applications to set aside statutory demands are made by application using *Form 6.4*.
 - Applications for BOs are made by petition.

3. Interim Orders

- 3.1 Care should be taken that the proposal complies with IR 5.3 and the written evidence in support with IR 5.7.
- 3.2 If no petition has been presented and no BO has been made, and provided that the nominee waives notice of the hearing, the IO may be made without attendance. The consideration of the nominee's report, leading to a direction for a creditors' meeting and an extension of the IO, may also be dealt with without attendance if there is no petition or BO. If a petition has been presented or a BO made there must be a hearing and notice which have been given to the petitioner, the Official Receiver and any trustee appointed (IR 5.7(4)).
- 3.3 In any case, with or without attendance and whether or not there is a petition or BO, these two stages may be combined in a "concertina" order if the nominee's report has already been submitted when the IO is made.
- 3.4 The final stage (consideration of the chairman's report) may also be dealt with without attendance if everything is in order. The usual order at that stage will be to discharge the IO.
- 3.5 *The Practice Direction – Insolvency Proceedings* ("PDIP") gives further information as to the court's practice on the making of IOs without attendance (see paragraph 16).

4. Individual Voluntary Arrangements without Interim Order

- 4.1 This procedure enables the debtor to agree a voluntary arrangement with his creditors without the need for an interim order. While this procedure does not involve a court hearing, it leaves the debtor vulnerable to legal action.
- 4.2 The debtor must submit to the nominee a document setting out the terms of the proposed voluntary arrangement and a statement of affairs.
- 4.3 The nominee is required within 14 days (or such longer period as the court may allow) of receiving the proposal and statement of affairs, to file two copies of his report to the court with the following documents:
- a copy of the debtor's proposals;
 - a copy or summary of any statement of affairs provided by the debtor;
 - a copy of the notice of the proposal endorsed with the date received by the nominee;
 - two copies of *Form 5.5*
- 4.4 The court does not consider the nominee's or chairman's report unless a subsequent application is made under the Act or Rules.

5. Applications to Set Aside Statutory Demands

- 5.1 The application should be in *Form 6.4*. No fee is payable provided the application is made on time (see below). The written evidence (see *Form 6.4*.) in support should exhibit the demand, state the date on which it came into the applicant's hands and state the grounds on which it should be set aside (as to which see *IR 6.5(4)*).
- 5.2 The application must be made within 18 days after service of the demand or (if the court is not open on the 18 day) on the next day on which the court is open. If made later an application for extension of time should be included in the application to set aside the demand, and the written evidence in support should include evidence in support of the extension. If an extension of time is applied for a fee is payable.
- 5.3 If the debt is a judgment debt the court will not normally go behind the judgment and will therefore not set aside the demand unless the applicant can demonstrate that he has a claim against the creditor who has made the demand which equals or exceeds the amount in the demand (*IR 6.5(4)(a)*). Ground (4) in side-note (c) to *Form 6.5* should not be relied on: it is not a proper ground for setting aside a demand.
- 5.4 If the Registrar is of the opinion that the written evidence in support shows no sufficient cause the application will normally be dismissed summarily under *IR 6.5(1)* without a hearing.

- 5.5 If that is not done the first hearing will normally be used to give directions for the parties to file and serve written evidence. If the application is disputed it will normally be adjourned for a full hearing at a later date when all the evidence has been completed and any other directions given have been complied with. Generally, the court will not fix a hearing date for final determination of the application unless the parties have filed a certificate confirming that the directions have been complied with and estimating the length of the hearing.
- 5.6 If the application is on the ground that the debt is disputed on substantial grounds the court will set aside the demand if it appears that there is a triable issue. If the evidence in support shows a *prima facie* issue the burden will be on the respondent creditor to satisfy the court that there is no triable issue.
- 5.7 If the application is on the ground that the debt is secured the security must be shown to belong to the debtor (not, for example, to a company for which the debtor is surety). If it is on the ground that the value of the security equals or exceeds the amount of the debt, the burden to prove that will be on the debtor and will require proper expert valuation evidence, and cross-examination, if appropriate.
- 5.8 The PDIP gives further information about the practice on statutory demand applications (see paragraph 12). The Bankruptcy Court also produces a leaflet (*I want to set aside a statutory demand – What do I do?*) which is available free.

6. Bankruptcy Petitions

- 6.1 A petition may be presented by one or more creditors, by the debtor, or by the supervisor of, or a person bound by, an IVA.
- 6.2 A creditor's petition may be based only on:
- non-compliance with a statutory demand which has not been set aside; or
 - unsatisfied execution.
- 6.3 The petition debt must be a liquidated sum not less than £750, though it may be the sum of two or more debts and there may be different petitioning creditors on the same petition in respect of different debts.
- 6.4 A petition may not be presented in respect of a debt which is secured unless Section 269(1) of the Act is complied with.

- 6.5 To comply with the E C Regulation on insolvency Proceedings, the following statements must be made and verified in the petition:-
- the whereabouts of the debtor's centre of main interests (Art. 3(1)) and, if the latter is not in the UK, his establishment (Art. 3(2));
 - whether or not the E C Regulation applies; and
 - whether the proceedings will be main, secondary or territorial proceedings as defined in Article 3 of the E C Regulation.
- 6.6. If a petition is based on a statutory demand (*Form 6.1, 6.2 or 6.3*) the creditor must do all that is reasonable to bring the demand to the debtor's attention and must serve it personally if reasonably practical (IR 6.3(2) and paragraphs 11 and 13 of the PDIP). The demand is not a court document, and if it needs to be served out of the jurisdiction permission to serve out is not required, but in that case the 18 and 21 day time limits in the demand must be amended in accordance with the PDIP (see paragraph 10).
- 6.7 If the demand is not served personally the creditor should make such attempts to serve as would justify an order for substituted service of a petition (as to which see paragraph 11 of the PDIP). The evidence of service must be made by a person or the persons having personal knowledge of the attempts made to effect personal service.
- 6.8 If a petition is based on unsatisfied execution the original of the enforcement officer's return should be lodged in court with the petition. A return to the effect that the writ is unsatisfied because of inability to gain access, despite attendances, will not be accepted. To be effective for the purposes of section 268(1)(b) the return should confirm that execution has been levied but that the debtor has no (or insufficient) goods.
- 6.9 If the petition is based on one or more statutory demands the debt or debts on which it is based must be limited to those claimed in the demand or demands (less any credit given for payments or reductions between service of the demand and presentation of the petition).
- 6.10 A petition (other than a debtor's petition) must be served personally unless an order for substituted service has been obtained. Paragraph 11 of the PDIP sets out the normal requirements for orders for substituted service. Personal knowledge by the witness(es) giving written evidence is required.
- 6.11 The petition must be served at least 14 clear days before the hearing date. If this is not done a prompt application for extension of the hearing date (not for adjournment) should be made (*IR 6.28*); no affidavit in support is normally required. However, if repeated applications are made, written evidence may be required setting out the attempts which have been made to serve the debtor and why they have been unsuccessful. If an application is made less than two clear working days before the hearing date the costs of the application will not be allowed. Paragraph 14 of the PDIP

gives further information about extensions of hearing dates. A copy of the extension order must be served with the service copy of the petition and should be referred to in the written evidence of service and exhibited to it along with the petition.

- 6.12 The written evidence of service of the petition must be filed promptly after service.
- 6.13 On each hearing of the petition a certificate of continuing debt in the form set out in paragraph 15.9 of the PDIP should be produced to the court. For the convenience of practitioners forms are printed on the attendance sheets available at court. On the first hearing a list (negative if appropriate) of supporting and opposing creditors, in form 6.21, should also be produced. If the hearing is an adjourned hearing you will also be required to certify that notice of the adjournment has been given in accordance with IR 6.29.
- 6.14 A petition against two or more members of a partnership is governed by the *Insolvent Partnership Order 1994 (SI 1994 No 2421)*. The provisions are complex and do not lend themselves to treatment in a brief guide such as this.

7. Annulment

- 7.1 A BO may be annulled if:
- on grounds existing when the order was made, it ought not to have been made;
 - the bankruptcy debts and expenses have been paid or secured for to the satisfaction of the court;
 - an IVA has been approved by the bankrupt's creditors.
- 7.2 The court will entertain an application on the first ground if the debtor failed to attend or be represented at the hearing when the BO was made, and the circumstances at that time were such that if he had attended or been represented he might have secured an adjournment or dismissal of the petition.
- 7.3 An application on the second ground should only be made if the undisputed bankruptcy debts and expenses have been paid in full (*IR 6.211(2)*). Only debts which are disputed or which relate to a creditor who cannot be traced may be secured for (*IR 6.211(3)*).
- 7.4 Where the application is made on the ground that an IVA has been approved the court may wish to be satisfied that the applicant is complying with the terms of his IVA before it makes the order.

8. Applications after Bankruptcy Order

- 8.1 Many different types of application and proceedings may follow a BO, usually initiated by the Official Receiver ("OR") or a trustee in bankruptcy. They include public examinations, applications to suspend automatic discharge, applications for permission to act as a director, and private examinations, applications by trustees for orders for possession and sale of property, applications for income payment orders and various applications by trustees for directions.

9. Hearings

- 9.1 Applications for committal and for injunctions and for the modification or discharge of injunctions must be made direct to a judge, as must applications in a matter which has been adjourned to a judge unless the Registrar has given permission to apply to the Registrar.
- 9.2 All other applications are made to the Registrar, who will determine them after giving the necessary directions or adjourn them to be heard by a judge.
- 9.3 In suitable cases orders may be made without attendance. Examples are given in paragraph 16 of the PDIP.
- 9.4 Urgent applications (e.g. to stay advertisement or to suspend an arrest warrant) can usually be arranged at very short notice. It will be very rarely that an order to stay advertisement or suspend a warrant will be made without giving the OR, or the trustee if appropriate, an opportunity to be heard.

10. Appeals

- 10.1 Appeals from Registrars, Circuit Judges and District Judges in bankruptcy matters are to a single judge of the Chancery Division. For the purposes of appeals in bankruptcy the Bankruptcy Registrars (or District Judges) exercise the functions of the Registrar of Civil Appeals (see paragraph 17 of the PDIP).
- 10.2 Appeals are subject to the permission requirement in *CPR Part 52.3* and should generally be made within 21 days of the date of the decision which the Appellant wishes to appeal.
- 10.3 Under Section 375(1) the court has power at any time to review, rescind or vary any order which it has made. It is sometimes worth while to consider whether to resort to this unusual jurisdiction (or the annulment jurisdiction in the case of BOs) is the appropriate course, rather than an appeal. But the Section 375(1) jurisdiction can only be invoked if there are fresh matters before the court, whether or not such material could have been put before the court at the original hearing.
- 10.3 Further information is contained in the leaflet *I want to Appeal an Order made by a County Court Judge or an Order made by a Bankruptcy Registrar of the High Court – what do I do?*

11. Rules

Insolvency proceedings are governed primarily by the Act and the IR. The Civil Procedure Rules and the practice of the High Court apply except so far as inconsistent with the IR or the practice of the Bankruptcy Court (*IR 7.51*).

12. Written evidence

Written evidence may generally be given in the form of an affidavit or written statement. In either case these should comply with the provisions of *CPR Part 32*.

13. Court fees

For information about court fees see the leaflet 'I wish to make myself bankrupt – what do I do?'

14. Court offices

14.1 For High Court Companies and Bankruptcy cases:

Rolls Building
7 Rolls Buildings
Fetter Lane
London EC4A 1NL

DX 160040 Strand 4

Companies enquiries: 020 7947 6102

High Court Bankruptcy: 020 7947 6294

General Fax: 0870 761 7716 (Goldfax)

14.2 For Central London Bankruptcy:

General Fax: 0870 761 7695 (Goldfax)

Bankruptcy Court Registry: 020 7947 6441 / 6839 / 6078

Bankruptcy Issue: 020 7947 6863 / 6448

Bankruptcy District Judges' Clerks: 020 7947 6187 / 7387

Enquiries: RCJBankCLCCDJHearings@hmcts.gsi.gov.uk